

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2259 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

APEX ELECTROSTATICS

Versus

REGIONAL PROVIDENT FUND COMMISSIONER

Appearance:

MR KM PATEL for Petitioner

MR JD AJMERA for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 24/06/97

ORAL JUDGEMENT

Rule. Mr.J.D.Ajmera waives service of Rule on behalf of the respondent. On the request of both the sides the matter is taken up for final hearing right today.

This Special Civil Application is directed against the order dated 27.2.1997 passed by the Regional Provident Fund Commissioner, Baroda in proceedings under

section 14B of Employees Provident Fund & Miscellaneous Provisions Act, 1952 against the petitioner company whereby 50% damages have been imposed for the delayed payment of amount in default. There is no dispute that the delay against the petitioner company is for a period of 9 days in March, 1995 and 9 days in September, 1995 with regard to the payment of Employer's Contribution under the Employees Deposit Linked Insurance Scheme, 1976, Employees Family Pension, 1971 and Employees Provident Fund Scheme in 1952. The only grievance which has been raised by the petitioner against this impugned order dated 25.2.1997 passed by the Regional Provident Fund Commissioner, Baroda is that while imposing the damages he has not kept in view the amendments which were made in these schemes vide Notification dated 16.8.1991 i.e. newly inserted para 8A under the Employees Deposit Linked Insurance Scheme, 1976, Employees Family Pension Scheme, 1971, Employees Provident Fund Scheme, 1952. By this Notification the rate at which the damages are to be imposed and recovered has been prescribed and under each of the above referred three schemes through para 8A, 10A and 32A it has been provided that in cases where the period of default is less than two months, rate at which the damages are to be imposed and recovered is 17% p.a. In view of the aforesaid provisions and keeping in view the fact that the delay in the instant case in each of the three cases was less than two months i.e. 9 days in March, 1995 and 9 days in September, 1995, the Regional Provident Fund Commissioner, Baroda could not have imposed the damages to the extent of 50%. This part of the direction with regard to the imposition of damages to the extent of 50% as contained in the impugned order dated 27.2.1997 does not appear to be in conformity with the amended provisions as aforesaid which were vide Notification dated 16.8.1991 issued by the Government of India, Ministry of Labour.

In view of the factual and legal position as aforesaid this part of the impugned order i.e. imposition of 50% of damages for a period of less than two months cannot be sustained and to that extent the order is set aside. The matter is remanded to the Regional Provident Fund Commissioner, Baroda to pass an order afresh with regard to the amount of damages to be recovered from the petitioner company under the Employees Deposit Linked Insurance Scheme, 1976, Employees Family Pension, 1971 and Employees Provident Fund Scheme, 1952 in accordance with paragraphs 8A, 10A and 32A respectively in accordance with law after hearing both the sides.

This Special Civil Application is accordingly
allowed in the terms as noted above and the Rule is made
absolute in the same terms. No order as to costs.

m.m.bhatt.